

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRYAN MUÑOZ, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:24-cv-01371-KES-BAM

**ORDER VACATING APRIL 18, 2025
HEARING**

**ORDER GRANTING MOTION TO
APPOINT GUARDIAN AD LITEM FOR
PLAINTIFFS BRYAN MUÑOZ, JERRY
MUÑOZ-MOLINA, AND ANGELENE
MUÑOZ-MOLINA**

(Doc. 14)

Currently before the Court is the motion of Plaintiff Maritsa Molina to be appointed as guardian ad litem for minor plaintiffs Bryan Munoz, Jerry Munoz-Molina, and Angelene Munoz-Molina. (Doc. 14.) Defendant United States of America did not file any opposition within the time prescribed by Local Rule 230(c). The matter was referred to the undersigned pursuant to the Standing Order issued on November 8, 2024. (Doc. 4-1.) The Court finds the motion appropriate for resolution without oral argument pursuant to Local Rule 230(g), and the hearing on the motion is HEREBY VACATED.

RELEVANT BACKGROUND

The claims in this action arise from the following common allegations: On June 21, 2023, Plaintiffs Bryan Munoz, Maritsa Molina, Jerry Munoz-Molina, Gerardo Munoz, and Angelene Munoz-Molina were at the Tule Recreation Area at Lake Success near the City of Porterville in

1 Tulare County, California. Plaintiff Bryan Munoz came upon what appeared to be a dirt hill or a
2 large mound of dirt. However, what appeared to be a dirt hill was really a large pile of hot ashes.
3 As Plaintiff Bryan Munoz approached the unrestricted pile of hot ashes, he fell onto the ashes
4 causing burns to his lower extremities. Plaintiff Bryan Munoz's family, Plaintiffs Maritsa
5 Molina, Jerry Munoz-Molina, Gerardo Munoz, and Angelene Munoz-Molina allegedly sustained
6 emotional distress as a result of the incident. (*See generally* Complaint, Doc. 1.)

7 According to the moving papers, on April 2, 2024, Plaintiffs filed a complaint against the
8 State of California, County of Tulare, U.S. Army Corps of Engineers, and U.S. Department of
9 Agriculture – Forest Service in Tulare County Superior Court. (Doc. 14 at 3; Declaration of
10 Mary L. Caruso (“Caruso Decl.”) ¶ 3.) The federal defendants—U.S. Army Corps of Engineers
11 and U.S. Department of Agriculture – Forest Service—removed the action to this court. (Caruso
12 Decl. ¶ 4.) Following removal, the State of California reportedly advised Plaintiffs that it could
13 not be sued in federal court pursuant to the Eleventh Amendment. (*Id.* ¶ 5.) As a result, on June
14 4, 2024, the parties stipulated to dismissal of the federal defendants, and the case was remanded
15 to state court. (*Id.* ¶ 6.)

16 On November 7, 2024, Plaintiffs commenced this parallel action under the Federal Tort
17 Claims Act against the United States of America. (Doc. 1.)

18 Plaintiff Maritsa Molina now seeks to be appointed as guardian ad litem for her children,
19 minor plaintiffs Bryan Munoz (born in 2012, age 13), Jerry Munoz-Molina (born in 2017, age 8),
20 and Angelene Munoz-Molina (born in 2018, age 7).

21 DISCUSSION

22 Federal Rule of Civil Procedure 17 provides that “[t]he court must appoint a guardian ad
23 litem—or issue another appropriate order—to protect a minor or incompetent person who is
24 unrepresented in an action.” Fed. R. Civ. P. 17(c)(2). This requires a district court to take
25 whatever measures it deems proper to protect the individual during litigation. *United States v.*
26 *30.64 Acres of Land*, 795 F.2d 796, 805 (9th Cir. 1986). Local Rule 202(a) of this Court further
27 states:

28 Upon commencement of an action or upon initial appearance in defense of an

1 action by or on behalf of a minor or incompetent person, the attorney representing
2 the minor or incompetent person shall present (1) appropriate evidence of the
3 appointment of a representative for a minor or incompetent person under state law
4 or (2) a motion for the appointment of a guardian ad litem by the Court, or, (3) a
showing satisfactory to the Court that no such appointment is necessary to ensure
adequate representation of the minor or incompetent person.

5 *See L.R. 202(a).* The decision to appoint a guardian ad litem “must normally be left to the sound
6 discretion of the trial court.” *30.64 Acres*, 795 F.2d at 804.

7 “[W]hen a parent brings an action on behalf of a child, and it is evident that the interests
8 of each are the same, no need exists for someone other than the parent to represent the child’s
9 interests under Rule 17(c).” *H.D.A. v. County of Stanislaus*, No. 1:22-cv-00384-DAD-SAB, 2022
10 WL 992990, at *1 (E.D. Cal. Apr. 1, 2022) (quoting *Gonzalez v. Reno*, 86 F. Supp. 2d 1167, 1185
11 (S.D. Fla.), aff’d, 212 F.3d 1338 (11th Cir. 2000)). “While a parent is generally appointed as a
12 guardian ad litem, there are situations where the best interests of the minor and the interests of the
13 parent conflict.” *Id.* (citing *Anthem Life Ins. Co. v. Olguin*, No. 1:06-cv-01165 AWI NEW (TAG),
14 2007 WL 1390672, at *2 (E.D. Cal. May 9, 2007)). Therefore, a parent is not entitled as a matter
15 of right to act as guardian ad litem for the child. *Id.*

16 The Court has considered the motion of Plaintiff Maritsa Molina to be appointed as
17 guardian ad litem for her children, minor plaintiffs Bryan Munoz, Jerry Munoz-Molina, and
18 Angelene Munoz-Molina, and finds no conflict that would preclude her from serving as guardian
19 ad litem. As acknowledged by the moving papers, Plaintiff Maritsa Molina may have a potential
20 conflict of interest with her children because she is also a party to this action. (Doc. 14 at 6.)
21 However, her claims are the same as those of her children, including the claim for negligent
22 infliction of emotional distress. According to her counsel, “she is fully committed to prioritizing
23 and acting in the best interests of her children throughout the case.” (Doc. 14 at 6; *see also*
24 Caruso Decl. ¶ 10.) She also will act on their behalf in this action, “ensuring that their legal rights
25 and interests are fully protected.” (Doc. 14 at 4; *see also* Caruso Decl. ¶ 10.) Moreover, she has
26 been appointed as the guardian ad litem for the minor plaintiffs in the parallel state court action
27 arising from the same incident. (*See* Ex. 1 to Caruso Decl.)

Given her appointment in the state court action, evidencing her consent to serve as guardian ad litem for her children, the Court will grant the motion.

CONCLUSION AND ORDER

Based on the above, IT IS HEREBY ORDERED that Maritsa Molina is appointed in this action as guardian ad litem for minor plaintiffs Bryan Munoz, Jerry Munoz-Molina, and Angelene Munoz-Molina.

IT IS SO ORDERED.

Dated: April 2, 2025

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE